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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,897	01/14/2004	James O. Gilkerson	279.214US3	3622

21186 7590 09/22/2009  
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MINNEAPOLIS, MN 55402

EXAMINER
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GETZOW, SCOTT M

ART UNIT	PAPER NUMBER
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3762

NOTIFICATION DATE	DELIVERY MODE
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09/22/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@slwip.com  
request@slwip.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/756,897	<b>Applicant(s)</b> GILKERSON ET AL.	
	<b>Examiner</b> Scott M. Getzow	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 6-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 103***

1. Claims 1,2,8,11-15,17-19,22,23,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Struble et al (6,122,545) in view of either Haefner et al (6,169,918) or Markowitz (4,343,311).

See previous office action. Re the added subject matter to the independent claims, the characteristics of the cross chamber blanking setting is considered to be not positively set forth in the claims since the programmable memory device is *for* storing, and not actually storing the settings. Such a situation makes it optional to have any settings stored in the memory device. The examiner suggests the replacement of the words ‘for storing’ with ‘storing’, after the words ‘memory circuit’ or ‘memory module’ or ‘memory device’ in the independent claims. Re claim 24, the skilled artisan would know what the appropriate preset refractory period should be, for the particular patient, in order to insure effective treatment. Further, no unexpected results would occur with such a refractory period value.

2. Claims 6,7,10,16,20,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Struble et al (6,122,545) in view of either Haefner et al (6,169,918) or Markowitz (4,343,311), and further in view of Wickham (5,891,171).

See previous office action. Further, re the added subject matter, the skilled artisan would know what noise window width would be most appropriate for the given patient. Further, no unexpected results would occur from such a setting.

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3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Struble et al (6,122,545) in view of either Haefner et al (6,169,918) or Markowitz (4,343,311), and further in view of Van Lake (5,653,737).

See previous office action.

4. Claims 1,2,8,11-15,17-19,22,23,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz (4,343,311) in view of Routh et al (5,735,881).

See previous office action, and comments made above re added subject matter to independent claims.

5. Claims 6,7,10,16,20,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz (4,343,311) in view of Routh et al (5,735,881), and further in view of Wickham (5,891,171).

See comments supra.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz (4,343,311) in view of Routh et al (5,735,881), and further in view of Van Lake (5,653,737).

See comments supra.

***Double Patenting***

7. Claims 1,2,6-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,687,539 in view of Haefner et al or Markowitz. See previous office action.

8. Claims 1,2,6-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,304,778 in view of Haefner et al or Markowitz. See previous office action.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/  
Primary Examiner, Art Unit 3762